

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Angel Hernandez-Martinez,)	C/A No.: 6:07-cv-1036-GRA
)	
Plaintiff,)	
)	
v.)	ORDER
)	(Written Opinion)
John H. Pyatt; the United States; and)	
Attorney General Alberto Gonzalez,)	
)	
Defendants.)	
)	
_____)	

This matter comes before the Court for a review of the magistrate's Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), and Local Rule 73.02 (B)(2)(d), D.S.C. Hernandez-Martinez (Plaintiff) originally brought this action pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging that Defendant Pyatt caused the plaintiff to fear for his safety and caused emotional distress while the plaintiff was incarcerated in Federal Correctional Institution in Bennettsville, South Carolina. The defendants filed a motion for summary judgment on August 3, 2007; the plaintiff was then advised of the summary judgment dismissal procedure and possible consequences if he failed to respond pursuant to *Rosboro v. Garrison*, 628 F.2d 309 (4th Cir. 1975). The plaintiff filed a motion in opposition on October 9, 2007. The magistrate filed a Report and Recommendation

on December 7, 2007, recommending that this Court grant the defendants' motion for summary judgment.

Plaintiff brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *See Boag v. MacDougall*, 454 U.S. 364, 365 (1982). Further, this Court will apply this liberal standard to all of the plaintiff's pleadings and motions, including any objections to the magistrate's Report and Recommendation, in this case.

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983).

In order for objections to be considered by a United States District Judge, the objections must be timely filed and must specifically identify the portions of the Report and Recommendation to which the party objects and the basis for the objections. Fed. R. Civ. P. 72(b); *see United States v. Schronce*, 727 F.2d 91,94 n.4 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841, 845-47 nn.1-3 (4th Cir. 1985). "Courts have . . . held *de novo* review to be unnecessary in . . . situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendation." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Furthermore, in the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983). The plaintiff did not file timely objections.

After a thorough review of the Report and Recommendation, this Court finds that the magistrate applied sound legal principles to the facts of this case. Therefore, this Court adopts the magistrate's Report and Recommendation in its entirety.

Conclusion

This Court hereby ADOPTS the magistrate's Report and Recommendation in its entirety and, therefore, GRANTS the defendants' motion for summary judgment.

IT IS THEREFORE SO ORDERED THAT the defendants' motion for summary judgment be GRANTED.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

January 25, 2008
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

Pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, Plaintiff has the right to appeal this Order within sixty (60) days from the date of its entry. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, **will waive the right to appeal.**